



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Nebraska

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Application Restrictions

STATE OF NEBRASKA

1) R.R.S. Neb. §§ 46-1101 et seq.; Neb. Admin. Code Title 195

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Nebraska Legislative Council.

1) R.R.S. Neb. §§ 46-1101 et seq.; Neb. Admin. Code Title 195

§ 46-1101. Act, how cited.

Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

§ 46-1102. Legislative findings.

The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water.

The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environmental Quality with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

§ 46-1103. Definitions, sections found.

For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116.01 shall apply.

§ 46-1104. Applicator, defined.

Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.

§ 46-1105. Chemical, defined.

Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

§ 46-1106. Chemigation, defined.

Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an onfarm irrigation distribution system.

§ 46-1107. Council, defined.

Council shall mean the Environmental Quality Council.

§ 46-1108. Department, defined.

Department shall mean the Department of Environmental Quality.

§ 46-1109. Director, defined.

Director shall mean the Director of Environmental Quality.

§ 46-1110. District, defined.

District shall mean a natural resources district created pursuant to Chapter 2, article 32.

§ 46-1111. Fertilizer, defined.

Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

§ 46-1112. Injection location, defined.

Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

§ 46-1113. Irrigation distribution system, defined.

Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

§ 46-1114. Open discharge system, defined.

Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

§ 46-1115. Permitholder, defined.

Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

§ 46-1116. Pesticide, defined.

Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

§ 46-1116.01. Working day, defined.

Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

§ 46-1117. Permit required; exception; application.

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

§ 46-1117.01. Special permit; issuance.

Permits for those systems determined through inspection by the district as not needing all of the safety equipment prescribed by the Nebraska Chemigation Act shall be forwarded immediately to the department for review. If the department determines that certain elements of the safety equipment otherwise prescribed by the act are not necessary, it shall so inform the district. The district shall then issue a special permit as approved by the department. Issuance of such special permits shall not relieve the permit holder or applicator from compliance with all other responsibilities under the act.

§ 46-1118. Provisional permit; when issued; revocation [Repealed].

§ 46-1119. Emergency permit; application; fee; violation; penalty.

(1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within two working days after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within two working days, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee as established in section 46-1121 not to exceed five hundred dollars payable to the district. For each permit, ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

§ 46-1120. Application; contents.

Each application to engage in chemigation shall contain (1) the name and post office address of the applicant, (2) the location by legal description of the land where chemigation is to be used, and (3) such other information as the department, after consultation with the district, may deem necessary.

§ 46-1121. Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

(1) To aid in defraying the cost of administration of the Nebraska Chemigation Act, the district shall collect an initial application fee for a permit, a special permit fee, an annual renewal fee, and an emergency permit fee. The fees shall be established by the district and shall be sufficient to cover the ongoing administrative costs and the costs of annual

inspection programs by the district and department. The fees collected pursuant to this section shall be established by the district in the amount necessary to pay reasonable costs of administering the permit program pursuant to the act. The fee for a permit and special permit shall not exceed one hundred fifty dollars. The fee for a renewal permit shall not exceed one hundred dollars. The fee for an emergency permit under section 46-1119 shall not exceed five hundred dollars. The district shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the district by a person or persons applying for a permit to operate a chemigation system.

(2) The fee for initial application for a permit or special permit shall be payable to the district. For each permit, five dollars shall be paid by the district to the department.

(3) The annual fee for renewal of a permit or special permit shall be payable to the district. For each permit, two dollars of the annual fee shall be paid by the district to the department.

(4) All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

§ 46-1122. Replacement or alteration of chemigation equipment; notice; inspection.

Any permit holder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall conduct an inspection of the replaced or altered equipment and shall approve the continuance of chemigation if the replaced or altered equipment remains in compliance with the requirements of section 46-1127. No additional permit fee shall be collected by the district for inspecting a previously approved injection location.

§ 46-1123. Districts; annual reports; contents.

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number

of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

§ 46-1124. District; conduct inspections; inspection warrant.

(1) Each district shall conduct areawide, selective, and periodic inspections to insure compliance with the Nebraska Chemigation Act and rules and regulations adopted and promulgated under the act. A permitholder or any person believed by the district to be chemigating without a required permit shall be notified by the district of the district's right and intent to inspect the premises concerned. Authorized representatives of the district and the department shall have access at all reasonable times to inspect a chemigation system and to otherwise carry out their duties under the act. Prior to inspection such authorized representatives shall make reasonable efforts to obtain consent to inspect from the permitholder, his or her authorized employee, the applicator, or the owner or operator of the system. If consent for inspection is denied, such authorized representatives may apply to the district or county court of the county in which the chemigation system is located for an inspection warrant to require the permitholder or person believed to be chemigating without a required permit to allow the authorized representatives to enter onto his or her land to carry out their duties under the act or the rules and regulations.

(2) No person shall refuse entry or access to any authorized representative of the district or department who requests entry for purposes of inspection and who presents appropriate credentials and an inspection warrant, and no person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant. If requested, the permitholder, applicator, or person chemigating without a required permit shall receive a report specifying all facts found which relate to compliance status.

(3) Entry upon any property pursuant to the act shall not be considered to be trespass, and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the act shall not be recoverable on that account alone.

§ 46-1125. Permit denial, suspension, revocation; grounds.

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

- (1) Practice of fraud or deceit in obtaining a permit; or
- (2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

§ 46-1126. Permit denial, suspension, or revocation; procedures; suspend operation; when.

(1) Before a district denies, refuses to renew, suspends, or revokes a permit, it shall send to the applicant or permit holder a notice setting forth the specific reasons for the proposed action. The denial, refusal to renew, suspension, or revocation shall become final ten calendar days after mailing of the notice unless such person, within such ten-day period, gives the district written notice of a request for a hearing. If such request is made, the applicant or permit holder shall be given an opportunity for a hearing before the board of directors of the district and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the proposed action shall be affirmed or set aside. A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or permit holder.

(2) If the district or department concludes that there is or may be an actual or imminent threat of danger to persons or the environment by the operation of a chemigation system, the district or department shall immediately order suspension of the operation of the system. Any aggrieved person may, within ten days of receipt of an order of suspension pursuant to this section, request a hearing on such order. The hearing shall be held within ten days of receipt of the request. The district or department shall give written notice of the hearing by certified or registered mail or by personal service to the permit holder, applicator, or person responsible for the operation of the chemigation system. The district or department shall issue an order addressing the matters raised at the hearing within ten days after the hearing.

If the district or department concludes that the suspension should be continued, the district or department may, if necessary, apply for a restraining order or a temporary or permanent injunction against the permit holder, applicator, or person responsible for the operation of the chemigation system pursuant to the procedure prescribed by section 46-1138.

§ 46-1127. Irrigation distribution system; improper operation; penalty; equipment; rules and regulations.

(1) Any person who places any chemical in an irrigation distribution system or permits any chemical to be in an irrigation distribution system without having a properly operating (a) check and vacuum relief valve in the irrigation pipe, (b) inspection port or other device to check the performance of the check valve on the irrigation pipeline, (c) automatic low-pressure drain placed between the main check valve and the irrigation pump so that a solution will drain away from the source of water supply, (d) check valve in the chemical injection line, and (e) simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate or such other properly operating additional or replacement equipment as may be specified by the council pursuant to subsection (3) of this section shall be guilty of a Class IV misdemeanor.

(2) On or before October 1, 1986, the council shall adopt and promulgate rules and regulations specifying the standards for the equipment required pursuant to this section as

are necessary to prevent the contamination of the water supply. The standards specified in such rules and regulations shall not be such as to impose an unduly severe or costly burden on any person without substantially contributing to the prevention of water contamination.

(3) The council may adopt and promulgate rules and regulations specifying equipment other than that required in subsection (1) of this section if changes in design, technology, or irrigation practices or other similar reasons warrant the use of equipment in addition to or in lieu of that enumerated in this section. Any equipment specified pursuant to this subsection shall provide protection to the water supply at least equal to that provided by the equipment required in subsection (1) of this section. The districts shall be given forty-five days to review and comment on rules and regulations proposed by the council prior to the hearing by the council.

§ 46-1128. Applicators of chemicals; training sessions; certificate; expiration.

In order to insure that applicators of chemicals have sufficient scientific and practical knowledge in the use of chemigation, the director shall conduct training sessions directed toward thorough comprehension and knowledge of the safe use of chemigation or contract with the Cooperative Extension Service of the University of Nebraska to conduct such training sessions through its county extension agents and specialists in the state. If the department contracts for the training sessions, the Cooperative Extension Service shall be reimbursed for conducting the training sessions. The director shall issue a certificate acknowledging the satisfactory demonstration of competency to be determined by the director through the use of a written examination prepared and administered by the department. Each applicator's certificate, including such certificates issued prior to July 9, 1988, shall expire on January 1 of the fourth year after the date of issuance and shall be renewed upon the satisfactory completion of training and testing.

§ 46-1129. Training sessions; council; prescribe forms; adopt rules and regulations.

The council shall prescribe the necessary forms and adopt and promulgate such rules and regulations as shall be necessary to carry out the provisions of section 46-1128 regarding the conducting of training sessions and the issuing of certificates.

§ 46-1129.01. Applicator's certificate; revocation; grounds.

An applicator's certificate may be revoked by the department if the applicator:

- (1) Operates a chemigation system that is known to be defective or not in compliance with permit requirements;
- (2) Fails to report any actual or suspected accident resulting from the use of chemigation;

(3) Operates or authorizes operation of a chemigation system without the necessary permit; or

(4) Violates any of the provisions of the Nebraska Chemigation Act or standards, rules, and regulations adopted and promulgated pursuant to such act.

§ 46-1130. Posting of signs.

Signs shall be posted which provide notice that chemicals are applied in irrigation water in the field in areas being treated by means of chemigation with chemicals which appear on the restricted use list in the Federal Insecticide, Fungicide, and Rodenticide Act or chemicals for which labels require posting.

§ 46-1131. Accident; report required; investigation; cleanup and recovery plan.

The applicator or the permitholder shall report an actual or suspected accident related to the use of chemigation in his or her system to the department and the appropriate district within twenty-four hours of its discovery. Any accident resulting from the use of chemigation shall be investigated by the appropriate district and the department. In the event that the district or the department finds an adverse effect caused by such an accident, the department shall (1) determine the immediate danger presented by the accident, (2) take all steps necessary to assure immediate public safety, and (3) develop a plan of cleanup and recovery. The cleanup and recovery plan shall be carried out by the permitholder under the supervision of the department or the district.

§ 46-1132. Damage to premises; considered tort claim.

Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the district while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the Political Subdivisions Tort Claims Act. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the department while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the State Tort Claims Act.

§ 46-1133. Assistance to abate water contamination.

Each district or the department may provide technical and other assistance as may be necessary or desirable to abate the risk of water contamination in the state caused by chemigation.

§ 46-1134. Department; powers and duties.

The department shall have the power and duty:

(1) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions,

industries, and groups in furtherance of the purposes of the Nebraska Chemigation Act; and

(2) To receive or initiate complaints of water contamination, hold hearings in connection with water contamination, and institute legal proceedings in the name of the state for the control or prevention of water contamination.

§ 46-1135. District; adopt rules and regulations.

Each district may adopt and promulgate such rules and regulations as shall be necessary to carry out its responsibilities under the Nebraska Chemigation Act. The rules and regulations of a district shall be subject to approval by the director.

§ 46-1136. Council; adopt rules and regulations.

The council shall adopt and promulgate rules and regulations providing for:

- (1) Procedures and specifications for the installation, replacement, or repair of chemigation equipment;
- (2) A system for the issuance of permits by the district to engage in chemigation;
- (3) A procedure for a permit holder to follow when notifying the department and the appropriate district of any actual or suspected accident related to the use of chemigation;
- (4) A procedure for the review and approval of a cleanup and recovery plan for an accident related to the use of chemigation;
- (5) The posting of signs providing notice of the use of chemigation; and
- (6) Any other chemigation practices necessary to carry out the Nebraska Chemigation Act.

§ 46-1137. Compliance with act; affirmative defense.

Compliance with the Nebraska Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

§ 46-1138. Violation of act; procedures for compliance; prosecuting attorney; duties.

(1) Any person found by the district to be in violation of the Nebraska Chemigation Act or any rules and regulations issued pursuant to the act shall be notified by the district of such violation. Each person so notified by the district shall have ten days in which to comply. The district shall make every reasonable effort to obtain voluntary compliance. Voluntary compliance shall not preclude the district, department, Attorney General, or

county attorney from pursuing penalties in the proper court of law based on violations of the act or the rules and regulations. If after such ten-day period the violation has not been corrected, the district shall notify the department of the violation. The department shall make a preliminary investigation. If after such investigation the department determines that there is a violation of the act or rules and regulations, the district or the department shall either revoke the person's chemigation permit until such time as there is satisfactory compliance or issue an order suspending operation of the chemigation system until the required permit is obtained.

(2) The district or department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against the person or persons violating or threatening to violate the Nebraska Chemigation Act or the rules and regulations adopted and promulgated under such act to the district court of the county where the violation is occurring or is about to occur. The court shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(3) If the violation of the Nebraska Chemigation Act occurs with respect to a permitted system, a schedule for compliance may be established by the district in lieu of the ten-day compliance requirement.

(4) It shall be the duty of the Attorney General or the county attorney of the county in which such violation occurs or is about to occur, when notified of such violation or threatened violation, to cause appropriate proceedings under this section to be instituted and pursued without delay.

§ 46-1139. Engaging in chemigation without a permit; penalty; recovery of costs.

Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

§ 46-1140. Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.

Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs

for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

§ 46-1141. Tampering with chemigation equipment; penalty; recovery of costs.

Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

§ 46-1142. Failure to notify of accident; penalty; recovery of costs.

Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

§ 46-1143. Other violations; penalty; recovery of costs.

Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a

civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

§ 46-1144. District; failure to carry out responsibilities; hearing; procedure.

If at any time after January 1, 1988, it is alleged by the department upon its own initiative or as a result of a complaint being filed with the department that a district is not carrying out its responsibilities under the Nebraska Chemigation Act, the department may hold a contested case hearing. Notice of such hearing shall be published in such newspapers as are necessary to provide for general circulation within the district at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall inform the public as to the reasons for such hearing. The director shall receive evidence from all interested parties at the hearing. Each hearing conducted pursuant to this section shall be recorded, and such record shall be available for review.

§ 46-1145. District; failure to carry out responsibilities; effect.

If after a hearing held pursuant to section 46-1144 the director determines that the district is not carrying out its responsibilities under the Nebraska Chemigation Act, the powers and duties of the district set out in the act shall vest in the department for a period of twelve months. All application fees shall be payable to the department during such twelve-month period and shall be placed in the Chemigation Costs Fund. Each district which has lost its powers and duties to the department shall, at least thirty days prior to the end of any such twelve-month period, inform the director as to whether it is now able to carry out its responsibilities under the Nebraska Chemigation Act or the reasons why it will continue to be unable to meet such responsibilities. If the district is unable to meet its responsibilities, the department may continue to perform the powers and duties required of the district for an additional twelve-month period.

§ 46-1146. Appeal; procedure.

Any affected person aggrieved by any order issued or final decision made by the department pursuant to the Nebraska Chemigation Act may appeal the order or decision, and the appeal shall be in accordance with the Administrative Procedure Act. As used in this section, affected person shall mean an applicant for a permit which is subject to an order or final decision of the department or district and any owner of an estate or interest in or concerning land whose interest is or may be impacted in a direct or significant manner by the order or final decision of the department or district.

§ 46-1147. Powers of department; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of the department provided in Chapter 81, article 15.

§ 46-1148. Powers of district; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of a district provided in the Nebraska Ground Water Management and Protection Act.

Rules and Regulations Pertaining to Chemigation

Chapter 1. DEFINITIONS

001 Applicator means any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for themselves or on behalf of the permitholder for the land on which the chemigation will take place.

002 Chemical means any fertilizer, fungicide, herbicide, or pesticide mixed with the water supply.

003 Chemigation means any process whereby chemicals are applied to land or crops in or with water through an onfarm irrigation distribution system.

004 Council means the Environmental Quality Council.

005 Department means the Department of Environmental Quality.

006 Director means the Director of Environmental Quality.

007 District means a natural resources district created pursuant to Chapter 2, article 32.

008 Fertilizer means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

009 Injection location means each site where chemicals will be applied through an irrigation distribution system.

010 Irrigation distribution system means any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of groundwater or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

011 Open discharge system means a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

012 Permitholder means the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

013 Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

014 Restricted use pesticide means a pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq., has been granted.

Chapter 2. PERMITS; WHEN REQUIRED, APPLICATIONS, AUTHORIZATION BY RULE

001 No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation, unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this chapter shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system.

002 An application must be filed with the district for each injection location. The following information is the minimum requirement of the Department.

002.01 Name, address and telephone number of applicant.

002.02 Calendar year for which application is being made.

002.03 Legal description of the injection location site, defined to the quarter of quarter section (forty-acre increment).

002.04 Whether the application is for an initial, renewal or emergency permit.

002.05 The name(s) of the certified chemigation applicator(s), their certification number and the expiration date of their certification.

002.06 Whether the chemical injection equipment to be used is stationary or portable.

002.07 Signature of the permit applicant and date of signing. The signature must be that of the proposed permitholder or a person holding power of attorney from the applicant.

002.08 If the application is for a renewal permit, in addition to the information required in 002.01 through 002.07, the applicant shall list the names and estimated amounts of all the chemicals that were used in the chemigation system the previous year.

003 All applications for a chemigation permit must be completed on forms provided by the Department. Application forms shall be available at each district and county extension office and the Department, and such other locations as the district deems advisable.

004 A person is hereby authorized by rule to inject chemicals for maintenance of a subsurface drip irrigation system once each calendar year, provided such system:

004.01 Is equipped with an irrigation pipeline check valve, and

004.02 Is permitted under Title 122 – Rules and Regulations for Underground Injection and Mineral Production Wells.

Chapter 3. PERMITS; ISSUANCE, DENIAL, REVOCATION, SUSPENSION

001 Except as provided in Chapters 5 and 6, the district shall review each completed application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed.

002 No chemigation permit shall be issued or renewed by the district, except as provided in Chapter 5, if any of the following conditions occur:

002.01 The applicant has failed to provide the required information, as specified in Chapter 2, 002, on the application form;

002.02 The irrigation distribution system does not comply with the equipment standards of Chapters 9 and 10;

002.03 The applicator has not been certified as a chemigation applicator by the Department; or

002.04 Failure of the applicant to remit the appropriate fee.

003 The permitholder shall notify the district within ten days of any changes in the information provided on the permit application.

004 The district shall deny, suspend, refuse renewal of, or revoke a permit applied for or issued on any of the following grounds:

004.01 Fraud or deceit was used in obtaining a permit;

004.02 Failure to notify the district of equipment replacement or alteration within seventy-two hours;

004.03 Failure of the applicator or permit holder to notify the district and Department of an actual or suspected spill or accident within twenty-four hours;

004.04 Failure of the permit holder to carry out cleanup measures developed by the Department within the time specified; or

004.05 Violation of any other provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted pursuant to the Act.

005 The district or Department shall immediately suspend a permit if the district or Department concludes that there is an actual or imminent threat of danger to the public or the environment as a result of operation of a chemigation system.

006 The district shall notify any person found to be in violation of the Nebraska Chemigation Act or any rules or regulations issued pursuant to the Act that said person has ten days in which to comply. If the violation has not been corrected in the ten day period then the district shall notify the Department of the violation. If after a preliminary investigation the Department determines there is a violation then the person's permit shall be revoked until compliance is met. For systems operated by a permit holder the district may establish a schedule for compliance in lieu of the ten-day compliance requirement.

Chapter 4. PERMITS; EXPIRATION, RENEWAL

001 Permits issued during the calendar year shall expire on June 1 of the following year, except as provided in Chapter 6.

002 A permit may be renewed each year upon payment of the annual renewal fee and completion of an application form providing all the information requirements of Chapter 2, 002.

003 Permits not renewed on or before June 1 shall not be reinstated without filing a new application containing the information prescribed in Chapter 2, 002, payment of the initial application fee, and an inspection which shows compliance with the Chemigation Act and these regulations.

004 Permits are not transferrable.

Chapter 5. PERMITS; SPECIAL

001 If the district determines by inspection that a chemigation system does not need all of the safety equipment prescribed in Chapters 9 and 10, it shall forward such information to

the Department for review. If the Department concurs with the district, the Department shall grant approval to the district to issue a special permit.

002 The following information shall be provided by the district and is the minimum requirement of the Department.

002.01 Name, address and telephone number of the applicant.

002.02 Legal description of the system location.

002.03 U.S. Geological survey map showing the system layout topographically with the location and elevation of existing equipment and injection location indicated.

002.04 Location, nominal diameter and length of all pipe in the irrigation distribution system.

003 Issuance of a special permit shall not relieve the permit holder or applicator from compliance with all other responsibilities under the Act or these regulations.

Chapter 6. PERMITS; EMERGENCY

001 A person may file an application with the district for an emergency permit. An emergency permit shall be issued in accordance with the conditions of Chapter 3, 002.

001.01 If the district has not denied an emergency permit within two working days after the application is filed, the permit shall be deemed issued. Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

001.02 An emergency permit shall be valid for a period of forty-five days from the date of issuance.

002 Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of the Nebraska Chemigation Act or standards, rules and regulations adopted under it, shall have such permit automatically revoked by the district or the Department, without a hearing and subject to penalties as specified in the Chemigation Act.

Chapter 7. PERMITS; FEES

001 The fee for initial application for a permit or special permit shall not exceed one hundred and fifty dollars payable to the district. The district shall transfer five dollars of this fee to the Department.

002 The annual fee for renewal of a permit or special permit shall not exceed one hundred dollars payable to the district. Two dollars of the annual fee shall be transferred by the district to the Department.

003 The application for an emergency permit shall be accompanied by a fee not to exceed five hundred dollars payable to the district. The district shall transfer ten dollars of this fee to the Department.

004 The district shall forward the appropriate fees for the first half of the calendar year to the Department by September 1 of the calendar year and the fees for the last half of the calendar year by March 1 of the following year.

Chapter 8. DISTRICT RESPONSIBILITIES

001 The district may require additional information and adopt and promulgate rules and regulations as necessary to carry out its responsibilities under the Nebraska Chemigation Act (Secs. 46-1101 thru 46-1148). Such information requirements, and rules and regulations must be based on a justifiable need and are subject to approval by the Director.

002 Each district shall establish permit fees as required under the Nebraska Chemigation Act (Sec. 46-1121).

003 The district shall submit an annual report to the Department by March 1 of each year, which shall include the following information for the previous year:

003.01 The number of permit applications received by the district;

003.02 The number of permit applications approved by the district;

003.03 The number of chemigation system inspections made by the district at each permitted injection site and whether the inspections were initial inspections, for equipment replacement or repair, or routine monitoring; and

003.04 The name of all chemicals and estimated amounts used in chemigation systems within the district the previous year.

004 The district shall maintain each application or the information contained in the application for a period of five years and shall provide such information to the Department upon request.

Chapter 9. EQUIPMENT; STANDARDS, INSTALLATION

001 Any irrigation distribution system, except an open discharge system, through which chemigation is performed shall be equipped with the mechanical devices specified in paragraphs 002 through 007 of this Chapter. The equipment shall be installed in

accordance with the manufacturer's specifications and at the location specified. This shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements set forth herein.

002 Irrigation pipeline check valve. The check valve shall be located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline. Its purpose is to prevent a mixture of water and chemical from draining or siphoning back into the irrigation water source.

002.01 Existing irrigation distribution systems which, as of July 1, 1987 are equipped with a properly located check valve shall be considered in compliance, until repaired or replaced, if the valve provides a watertight seal against reverse flow.

002.02 Irrigation distribution systems which are not equipped with a check valve or contain a check valve which after repair cannot meet the requirement in 002.01, shall be equipped with a check valve as specified in Chapter 10.

002.03 For check valves manufactured or assembled after July 1, 1987, the manufacturer of the valve assembly shall provide verification to the director that the valve model has been tested and certified by an independent laboratory as meeting the criteria specified in Appendix I.

002.04 All check valves installed on an irrigation distribution system after January 1, 1988, shall be models certified to the director as specified in 002.03 above.

003 Vacuum relief valve. The vacuum relief valve shall be located on the pipeline between the irrigation pump and the irrigation pipeline check valve. Its purpose is to prevent creation of a vacuum when the water flowstops. If the valve connection will also serve as the inspection port, the permitholder will ensure removal of the valve at the time of inspection.

004 Inspection port. The inspection port or other viewing device shall be located on the pipeline between the irrigation pump and the irrigation pipeline check valve. In many cases the vacuum relief valve connection can serve as the inspection port.

004.01 The inspection port or viewing device shall be situated in such a manner that the inlet to the low pressure drain can be observed.

004.02 A minimum four-inch diameter orifice or viewing area is required for systems without an existing port or device after January 1, 1988.

005 Low-pressure drain. The low-pressure drain shall be located on the bottom of the horizontal pipe between the irrigation pump and the irrigation pipeline check valve. Its

purpose is to drain any mixture of water and chemical away from the irrigation water source.

005.01 The drain shall be constructed of corrosion resistant material or otherwise coated or protected to prevent corrosion;

005.02 The drain shall have an orifice of at least three-quarter inch diameter and shall not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe; and

005.03 When the pipeline water flow stops, the drain will automatically open. A tube, pipe or similar conduit shall be used to discharge the solution at least twenty feet from the irrigation water source.

006 Chemical injection line check valve. The chemical injection line check valve shall be located between the point of chemical injection into the irrigation pipeline and the chemical injection pump. Its purpose is to prevent flow of water from the irrigation system into the chemical supply tank and to prevent gravity flow from the chemical supply tank into the irrigation pipeline.

006.01 The valve shall be constructed of chemically resistant materials;

006.02 The valve shall be designed to prevent irrigation water under operating pressure from entering the chemical injection line; and

006.03 The valve shall be designed to have a minimum opening (cracking) pressure of ten psi. When the chemical injection pump is shut down, the valve shall prevent any leakage from the chemical supply tank.

006.04 As an alternative to the minimum opening pressure requirement in 006.03 above, a vacuum relief valve may be placed in the injection line between the chemical injection line check valve and chemical injection pump. The vacuum relief valve shall be constructed of chemically resistant materials, shall open at atmospheric pressure, shall be at an elevation greater than the highest part of the chemical supply tank and shall also be the highest point in the injection line.

007 Simultaneous interlock device. The irrigation pumping plant and the chemical injection pump shall be interlocked so that if the pumping plant stops, the injection pump will also stop. Its purpose is to prevent pumping chemicals into the irrigation pipeline after the irrigation pump stops.

Chapter 10. EQUIPMENT; REPLACEMENT, REPAIR

001 Any permit holder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall

conduct an inspection of the replaced or altered equipment to determine compliance with Chapter 9.

002 Replacement equipment shall meet the requirements of Chapter 9, and in the case of irrigation pipeline check valves, shall meet the following minimum requirements:

002.01 The valve body and all components shall be constructed of corrosion resistant materials or otherwise coated or protected to prevent corrosion;

002.02 The valve shall contain a sealing mechanism designed to close prior to or at the moment water ceases to flow in the downstream direction. This mechanism shall be either diaphragm-actuated by hydraulic line pressure, spring loaded or weight loaded to provide a watertight seal against reverse flow;

002.03 The valve shall be designed to meet the leakage tests specified in Underwriters Laboratory, Inc., Standard UL 312, Chapter 16, Leakage Test, page 11, dated May 22, 1984. (Appendix I).

002.04 All moving components of the valve shall be designed to prevent binding, distortion or misalignment during water flow; and

002.05 The valve shall be designed to allow for easy repair and maintenance, including removal from the pipeline if required to perform such work.

003 The equipment required in these rules and regulations shall be maintained in working condition during all times of chemigation. When required, the equipment shall be repaired to its originally designed condition.

Chapter 11. INSPECTIONS, ACCESS

001 Employees of the district and the Department shall have access at all reasonable times to inspect chemigation systems and otherwise carry out their duties under the Chemigation Act.

002 The district shall conduct an inspection of each injection location for which an application for a chemigation permit has been received to determine compliance with the equipment standards of Chapters 9 and 10 except as provided for in Chapter 5.

002.01 The inspection for a permit application to be issued according to Chapters 3 and 5 shall be conducted within forty-five days after the application is filed.

002.02 For each special permit issued according to Chapter 5, an inspection shall be conducted prior to permit renewal.

002.03 For each emergency permit issued, an inspection shall be conducted during the forty-five day effective period of the permit if no inspection was conducted prior to permit issuance.

003 The district shall conduct an inspection of replaced or altered equipment after being notified of such changes by the permit holder to determine compliance with Chapter 10. When in compliance, the district shall approve the continuance of the permit. If not in compliance, the permit shall be suspended under Chapter 3, 004.05 until compliance is demonstrated and approval for operation is given by the district.

004 Each application for renewal is subject to inspection of equipment and site to determine compliance with the Chemigation Act. When an inspection is made and compliance is not demonstrated, renewal shall be refused, suspended, or revoked (pursuant to Chapter 3, 004) until compliance is achieved and approval for operation given by the district.

005 The district shall carry out an areawide, selective and periodic inspection program to insure compliance with the Nebraska Chemigation Act and these rules and regulations.

Chapter 12. POSTING

001 Signs shall be posted on chemigated fields when a restricted use pesticide or a chemical for which the label requires posting is used.

002 The signs required in these rules and regulations shall meet the following requirements:

002.01 A sign shall be posted at each usual point of entry into a treated area and at the point of chemical injection if located outside the treated area. Each sign shall be posted in such a manner that it is clearly visible and legible.

002.02 The sign shall contain the words "KEEP OUT, CHEMICAL APPLICATION THROUGH IRRIGATION SYSTEM".

002.03 The lettering on the sign shall be a color which clearly contrasts with the background and the letters shall be two and one-half inches in height.

002.04 Each sign shall be posted and maintained during the chemigation period and until the end of reentry period as specified by the chemical label. The sign shall be posted no sooner than 48 hours prior to the start of chemigation and shall be removed, covered, or otherwise made illegible, no later than 48 hours after the end of reentry period.

Chapter 13. CERTIFICATION AND REVOCATION PROCESS FOR CHEMIGATION APPLICATORS

001 The Department shall conduct or contract with the University of Nebraska Cooperative Extension Service to conduct annual statewide training sessions in the safe use of chemigation. All chemigation applicators are required to attend a training session.

002 The director shall issue a card entitled "Chemigation Applicator Certification" to those individuals who attend a training session and pass a written examination approved by the Department acknowledging his/her satisfactory competency in the use of chemigation.

003 The Chemigation Applicator Certification, shall expire on January 1 of the fourth year after the date of issuance.

004 The Chemigation Applicator Certification shall be renewed by attending a training session and passing a written examination approved by the Department.

005 A Chemigation Applicator Certification may be revoked by the Department if the applicator:

005.01 Operates a chemigation system that is known to be defective or not in compliance with permit requirements;

005.02 Fails to report any actual or suspected chemigation accident to the district and the Department;

005.03 Operates or authorizes operation of a chemigation system without the necessary permit; or

005.04 Violates any of the provisions of the Nebraska Chemigation Act or subsequent regulations or standards.

006 Any person who has a certification revoked shall be afforded an opportunity for a fair hearing as provided in Neb. Rev. Stat. §81-1507(2)(3). The hearing shall be held upon written application to the director within thirty days after receipt of the notice from the director of such revocation. On the basis of such hearing the director shall affirm, modify or revoke his or her previous determination. The hearing shall be considered conducted as a contested case subject to Title 115, Rules of Practice and Procedure.

Chapter 14. ACCIDENT REPORTING

001 The applicator or permitholder shall report any actual or suspected accident related to the use of chemigation in his or her system to the Department and the appropriate district within twenty-four hours of its discovery.

002 Notification shall be made by telephone to the Department and the appropriate district during office hours, from 8 a.m. to 5 p.m., Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol. All information known

about the accident at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location, and any corrective or cleanup actions presently being taken.

Chapter 15. ACCIDENT INVESTIGATION AND REMEDIATION

001 Any actual or suspected accident resulting from the use of chemigation shall be investigated by the appropriate district and the Department. The applicator or permitholder shall supply any additional information requested in the course of the investigation regarding the amount and type of substance(s) involved, the well and equipment involved, and information the applicator or permitholder would reasonably be expected to know.

002 The Department shall determine any immediate action necessary according to Part I of the Ground Water Remedial Action Protocol (Title 118, - Ground Water Quality Standards and Use Classification, Appendix A).

003 The Department shall perform the appropriate assessments and develop a workplan for any further (final) remedial action according to Part II of the Ground Water Remedial Action Protocol (Title 118, Appendix A). The remedial action workplan shall be carried out by the permitholder under the supervision of the Department or the district.